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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,732	02/19/2002	Aleks D. Nikolich	Case 1	3469

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EXAMINER

CRAWFORD, GENE O

ART UNIT

PAPER NUMBER

3651

DATE MAILED: 05/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,732

Applicant(s)

NIKOLICH, ALEKS D.

Examiner

Gene O. Crawford

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3, 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 recites, "the capacity of the supply bins may be less than that of the storage bins", however this recitation is unclear in that the use of the phrase "may" is indefinite because it is unclear whether what follows is in fact a part of the claimed invention.

3. Claim 11 recites the limitation "the recording means" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Arnold et al.

The apparatus for use in distributing a plurality of articles of different kinds throughout a facility disclosed by Arnold et al. includes all the claimed features including: **(claim 1)** a storage cart 14 having a plurality of storage bins 54 for holding a corresponding number of articles of different kinds, the storage cart having labels 105 individually identifying articles in the storage bins 54 (column 7, lines 39-40), a supply cart 12 capable of being located in user areas having supply bins for receiving articles, supplemental means 22 applicable to the supply cart and having control buttons 22 respectively corresponding to and identifying the articles, means responsive to the control buttons 22 for visually recording identification of the articles placed in and removed from the supply cart 12 (column 5, lines 12-24); **(claim 2)** the control buttons 22 being manually actuable and adjacent articles when the supplemental means are in operating position on the supply cart (figure 1); **(claim 3)** a user being enabled to actuate a control button in the same motion as placing or removing an article (column 5, lines 12-24); **(claim 4)** the supply cart having a plurality of shelves 20, 28 on which bins are formed, and which are operable for receiving and supporting articles and wherein the supplemental means is in the form of panels detachably mounted, in that anything is detachable as broadly claimed, each panel having control buttons 22 thereon corresponding to the articles on the shelf (figures 1 and 5); and **(claim 5)** each panel including a signal light corresponding with the push buttons 22 (column 5, lines 35-40).

Arnold et al. discloses the supply cart 12 has restricted access in the form of locks on the doors 90. The recitation of an "open supply cart" appears to be an obvious design choice and expedient in view that it requires the mere removal of the locking

mechanisms of the prior art. It would have been obvious to one of ordinary skill in the art to provide the supply cart be an open supply cart if one so skilled desired not to have the security protections disclosed in Arnold et al.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 7-11, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps ('455) in view of Arnold et al.

Lipps discloses an apparatus for use in distributing a plurality of articles of different kinds throughout a facility that has a central storage area that includes: **(claim 6)** a central storage area (column 6, lines 9-10), a supply cart 87 adjacent to a user area and having supply bins 22 for receiving and holding the articles, the supply cart 87 having labels 45 individually identifying articles in the supply bins 22 (column 3, lines 55-60), supplemental panels 36 having push buttons 42 operably associated with the storage bins 22, and a computer for registering signals from the push buttons 42 (column 8, lines 3-6); **(claim 7)** a computer 90 operably associated with each supply cart 87 and operable in response to actuation of the push buttons 42 in a respective supplemental panel for recording the withdrawing of articles from the supply cart 87 (column 8, lines 1-10); **(claim 8, 9)** the computer capable of receiving signals from the

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carts 87 and identifying the carts and registering the number of articles in each bin in the cart (column 8, lines 1-10); **(claim 10)** the apparatus including a system computer and server computer 90, the cart computer being capable of transmitting signals to the server computer (column 8, lines 1-10); **(claim 11)** including a printer and the server 90 being operable to transfer signals to other hospital computer systems (figure 13 and column 8, lines 1-18); **(claim 18)** means for identifying an empty bin in the supply carts, made empty by a previous user in that the computer tracks the items removed from the bins and keeps a running inventory of what is located in each bin; and **(claim 19)** signal means for identifying the receiver of the articles withdrawn (column 4, lines 14-31).

Lipps does not disclose a storage cart in the storage area having a plurality of bins for holding a corresponding number of articles. However Arnold et al. discloses an apparatus for use in distributing a plurality of articles of different kinds throughout a facility including the broad teaching of providing a storage area having a storage cart 14 having labels 105 individually identifying articles in the storage bins. It would have been obvious to one of ordinary skill in the art to provide the storage area of Arnold et al. with a storage cart having labels to facilitate the storage of extra supplies such requiring the mere choice of an art recognized configuration for storing articles in an auxiliary location as taught by Arnold et al.

Lipps discloses the supply cart 87 has controlled access in the form of locks on the doors. The recitation of an "open supply cart" appears to be an obvious design choice and expedient in view that it requires the mere removal of the locking mechanisms of the prior art. It would have been obvious to one of ordinary skill in the

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art to provide the supply cart be an open supply cart if one so skilled desired not to have the security protections disclosed by Lipps.

Double Patenting

8. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

9. Claims 1-19 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-19 of copending Application No. 10/084,075. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Allowable Subject Matter

10. Claims 13-16 would be allowed subject to cancellation of the claims in the copending application cited above.

11. Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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12. Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: an apparatus and method for use in distributing a plurality of articles throughout a facility that has a central storage area, a storage cart and supply cart including: (a) a computer means for registering a the difference in the number of articles in the storage cart and supply cart and printing a picking list based on the difference registered; and (b) a means for providing an alert signal in response to the presence of hazardous materials in the articles, in combination with the rest of the claim language is not taught or fairly suggested by the prior art.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following are cited to show the art with respect to inventory management systems having item switches for inventory tracking: Ishizawa et al., Lipps ('394), and Chen et al.

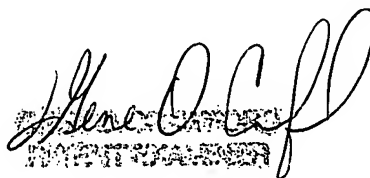
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gene O. Crawford whose telephone number is 703/305-9733. The examiner can normally be reached on Monday thru Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on 703/308-1113. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703/305-3597 for regular communications and 703/305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/308-1113.

A handwritten signature in cursive script, appearing to read "Gene O. C. fl", written over a horizontal line of text that has been mostly obscured by the ink.

gc
April 14, 2003